

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Southern Pacific Transportation Company (Eastern Lines)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier terminated the seniority of Welder Helper R. L. Patterson on April 10, 1987 (System File MW-87-109/464-22-A).

(2) The Agreement was further violated when the Carrier failed to afford the Claimant a fair and impartial hearing prior to his dismissal.

(3) As a consequence of the violations in either Part (1) and/or Part (2) hereof, the Claimant shall be reinstated with seniority and all other rights unimpaired and he shall be recalled to service in accordance with his seniority."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This case raises the question of whether Claimant, a Welder Helper, should have been afforded an investigation prior to his dismissal from service on April 10, 1987, and whether there was valid reason for his discharge.

Claimant was recalled to service and submitted to a return to work physical. When marijuana was detected in his urine, he was notified that he was medically disqualified from service. To remain an employee, he was advised by letter dated April 17, 1986, to enter the Employee Assistance Program and contact Dr. J. P. Klein.

Claimant entered the Program and was subsequently cleared for duty. A second urinalysis indicated the presence of cocaine in his system. Carrier thereupon wrote Claimant stating that: "Although you contacted Dr. Klein within the prescribed time, your failure to remain in the employee assistance program until released for return to service is considered a voluntary resignation from the Southern Pacific Transportation Company."

Carrier clearly considered its letter of April 17, 1986, to be a contract with Claimant, calling for his forswearing the use of drugs when he entered the EAP Program. Also implicit in this contract was the understanding that his failure to comply would result in his automatic discharge from service. Thus, the terms of this contract overrode the contractual requirement contained in Article 14 of the parties' Agreement calling for a fair and impartial Investigation prior to any dismissal from service.

Unfortunately for Carrier, for the terms of the parties' Agreement to be supplanted in this manner, the terms of such an arrangement must be far more explicit, with all implications fully outlined. Further, proper notification to the Organization must be given so that its rights and the rights of those whom it represents may be preserved.

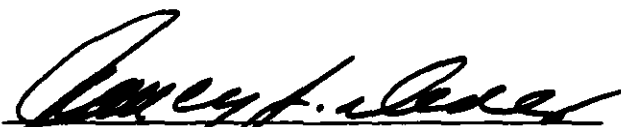
At the same time, however, there appears to be little doubt from the record that Claimant was not fit to be returned to duty when he was terminated. This Board shall therefore direct that he be returned to work, without backpay, contingent on his ability at this time to pass a return-to-work physical.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1989.